

OTHER INFORMATION

- 5.110. On March 9, 2002, Catarino of AC Concrete sent a letter to the LRFA Board of Directors. In the letter, Catarino takes issue with the industry fund and alleges illegal price fixing meetings. The LRFA responded with a letter dated June 5, 2002 stating that it was not involved in price fixing. The letter also indicated it would commence legal action against Catarino and his company should he continue to allege that the LRFA had engaged in price fixing.
- 5.111. On June 25, 2002, Catarino sent another letter to unknown recipients in which he alleged that prices were fixed at \$32 per linear foot at meetings directed by the President of the LRFA, and the then- Association Manager, Harold Piccininni ("Piccininni").
- 5.112. On June 20, 2004, Catarino sent another letter to the LRFA and indicated that the letter would also be sent to the Toronto Home Builders Association. The letter outlined the issues he had with the \$100,000 letter of credit, the prohibition on sub-contracting and the industry fund outlined above. Catarino also alleged that he attended a meeting at the LRFA offices on February 25, 1997. Catarino indicated that the meeting was described by Piccininni as private and illegal but in their best interest and no record should be made of the meeting. At the meeting the attendees discussed sharing work among themselves and raising the price of Concrete Forming from \$26 per linear foot to \$32 - \$34 per linear foot. Catarino further alleged that the group met again on March 4, 1997 and agreed on the price to be charged for Concrete Forming.
- 5.113. On August 26, 2004, Catarino repeated his allegation of meetings to increase the prices to Builders in a letter to unknown recipients.
- 5.114. On October 28, 2004, legal counsel for the LRFA sent a letter to Catarino stating that he had been instructed to bring legal action against Catarino for publishing defamatory comments about Piccininni and the LRFA. If Catarino issued a full retraction of the statements with an apology to Piccininni, the LRFA would reconsider its legal action.
- 5.115. In November 2004, Catarino was sued for defamation by the LRFA. On March 7, 2005, a settlement was reached in which Catarino withdrew his price fixing allegation.
- 5.116. In addition to the defamation suit, Catarino has also appeared before the Ontario Labour Relations Board ("OLRB") on a number of occasions. In many instances, Catarino was being grieved for failing to comply with the terms of the collective agreement relating to the provisions noted in this Information, namely the \$100,000 letter of credit and the industry fund. A summary of these actions are set out in Appendix A.

AUTHORIZED PERSONS

PERSONNES AUTORISÉES

6. The affiant therefore asks that warrants be issued authorizing the Commissioner and the following named persons to enter and search the premises described in paragraph 4 and seize the records or other things described in paragraph 3 in accordance with the search warrants herein requested:

6. Le dénonciateur demande donc que les mandats soit délivré pour autoriser la commissaire et les personnes ci-après nommées à pénétrer, perquisitionner les locaux décrits au paragraphe 4 et saisir les documents ou autres choses décrits au paragraphe 3 conformément au mandat de perquisition demandé dans la présente dénonciation:

- 6.1. Authorized representatives of the Commissioner:

Gwilym Allen, Simon Bessette, Lynne Charpentier, Lindsay Donders, Brian Elliott, Elizabeth Eves, Marisa Ferraiuolo, Laura Grieveson, Paul Jaenicke, Russell Jutlah, Kiran Khan, Stephan Luci, Kelly Mahoney, Dejana Milinkov, Sydney Odell, Kristen Pinhey, Francois Rioux-Beaupré, Oleg Shpetrik, other authorized representatives of the Commissioner and any person under the direction of the authorized representatives of the Commissioner that can either facilitate the search or facilitate access to the premises, including opening anything that cannot be opened during the course of the search, should such access be denied.

- 6.2. Authorized representatives of the Commissioner trained in electronic search procedures (referred to above as “**electronic evidence officers**”):

Jeff Chamberlain, Eric Daoust, Sébastien Guy, Matthew Kyrytow, Mario Mainville, Duncan Monkhouse, Clifford Smith, Robert Tait, Marcel Thérien and other authorized representatives of the Commissioner trained in electronic search procedures, and in order to assist the aforementioned officers, any person who, under the direction of these officers, can facilitate the electronic search of computer systems, data storage devices and media.

- 6.3. Any Peace Officer of the Province of Ontario, in order to assist the authorized representatives of the Commissioner.

- 8.3 The warrants authorize the persons mentioned in paragraph 6 of this Information to search anything found on the premises, including personal belongings, for which they have reason to believe may contain records or other things to be searched for and seized. Personal belongings include, but are not limited to, briefcases, bags, purses, knapsacks, wallets and electronic devices, such as PDAs, pagers, telephones and other data storage devices.
- 8.4 The persons authorized to execute the search warrants be authorized to temporarily remove from the search premises any pre-selected record or other thing identified to be searched at the end of any day of searching for the purposes of preserving its integrity, or to prevent the loss or destruction of the said record or other thing. These records or other things will remain sealed and will be kept in the custody of an authorized person executing the warrants during this period of temporary removal. These records or other things will be returned to the premises on the day when such person next returns to the searched premises.

SOLICITOR-CLIENT

SECRET PROFESSIONNEL DE L'AVOCAT

9. **The following information constitutes the reasonable grounds to believe that a law office will or will not be on, or part of, the premises:**

9. **Les renseignements suivants contiennent les motifs raisonnables de croire qu'un bureau d'avocat se trouvera ou non, ou en partie, sur les lieux:**

The affiant informs the court that:

- 9.1 (a) only non-privileged records are being sought; and
- (b) a reasonable opportunity to claim privilege over records subject to search and seizure will be afforded to those in control of the premises to be searched, prior to the commencement of the search.
- 9.2 On March 19, 2012, Officer Milinkov spoke to a representative of the Law Society of Upper Canada's Resource Centre, who confirmed that no lawyers were listed for the

address for Camp Forming at 150 Creditstone Road, Vaughan, Ontario L4K 1N5; the address for Mur-Wall at 50 Pippin Road, Concord, Ontario, L4K 4M4; the address for Orta Forming at 180 Regina Road, Woodbridge, Ontario, L4L 8L6; or the address for LRFA at 4550 Highway 7, Suite 235, Woodbridge, Ontario, L4L 4Y7. Accordingly, I do not believe that law offices exist on the premises to be searched and it is not contemplated that searches of law offices will take place during the within search.

- 9.3 Should a law office be located at any of the premises to be searched, I do not intend to search the law office. If the situation should arise where there are no reasonable alternatives but to search the office of in-house counsel, another search warrant will be sought at that time.
- 9.4 If an authorized representative of the Commissioner has reason to believe that a record may be subject to solicitor-client privilege, the record will be sealed whether or not a claim of solicitor-client privilege is made, unless a person who appears to have authority for the premises to be searched determines at that time, after examining the record in question, that no privilege applies or waives any privilege over the record. The authorized representative of the Commissioner, when identifying a record as potentially being subject to solicitor-client privilege, makes only a preliminary assessment. He or she neither examines the record extensively nor decides whether the privilege applies.
- 9.5 Records which are sealed will be placed in the custody of one of the following parties, as authorized by subsection 19(3) of the Act:
- (a) the registrar, prothonotary or other like officer of a superior or county court in the province in which the record was ordered to be produced or in which it was found, or of the Federal Court;
 - (b) a sheriff of the district or county in which the record was ordered to be produced or in which it was found; or
 - (c) some person agreed on between the Commissioner, or an authorized representative of the Commissioner, and the person who makes the claim of privilege.
- 9.6 The affiant asks that the search warrants contain the following wording to deal with unforeseen discovery of solicitor-client privileged records:
- (a) when a claim is made that a record about to be examined, copied or seized is subject to solicitor-client privilege; or
 - (b) when an authorized representative of the Commissioner has reason to believe that a record may be subject to solicitor-client privilege;

ONTARIO SUPERIOR COURT OF JUSTICE
(Toronto Region)

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER OF an investigation and inquiry under section 10(1)(b)(iii) of the *Competition Act*, concerning alleged activities of certain Residential Low Rise Concrete Forming Contractors and The Residential Low Rise Forming Contractors Association of Metropolitan Toronto and Vicinity, contrary to section 45 of the *Competition Act*;

AND IN THE MATTER OF an *ex parte* application by an authorized representative of the Commissioner of Competition for the issuance of warrants to enter, search and copy or seize for examination or copying certain records or other things pursuant to sections 15 and 16 of the *Competition Act*;

**INFORMATION OF KELLY MAHONEY
SWORN ON MARCH 22, 2012**

Gary Caracciolo
Public Prosecution Service of Canada
Competition Law Section
151 Yonge Street, 4th Floor
Toronto, Ontario M5C 2W7
Telephone: 416-954-8174
Facsimile: 416-954-1470